

1 HONORABLE LAUREN KING  
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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

ADELINA MENDOZA, individually and on  
behalf of all others similarly situated,

Plaintiff,

v.

WELLPOINT WASHINGTON, INC.,

Defendant.

Case No. 2:24-cv-00497-LK

**STIPULATED PROTECTIVE ORDER**

16. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

25. “CONFIDENTIAL” MATERIAL

“Confidential” material shall include, but is not limited to, the following documents and tangible things produced or otherwise exchanged: Defendant’s consumer lists, consumer contact

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1 information and other protected health information, call scripts, call logs, call recordings, and  
2 internal policies and procedures documents. The parties reserve the right to designate additional  
3 materials as confidential material should the scope of discovery change.

4 The Parties shall use reasonable care to designate Protected Health Information ("PHI") as  
5 confidential material in accordance with the terms of this Order. However, PHI shall maintain its  
6 confidential and protected status and shall be subject to the terms of this Agreement, regardless of  
7 whether it has been appropriately designated. PHI means confidential personal information that is  
8 protected by a right of privacy under the Health Insurance Portability and Accountability Act of  
9 1996 ("HIPAA") and any and all applicable state and federal privacy laws. Such information  
10 includes, but is not limited to: health information that identifies an individual or contains  
11 information that could be used to identify an individual relating to the past, present or future  
12 medical or mental health condition of an individual; the provision of health care to an individual;  
13 or the past, present, or future payment for the provision of health care to an individual and has the  
14 same scope and meaning as set forth in the regulations promulgated pursuant to HIPAA and  
15 applicable state laws and regulations. PHI shall include, but is not limited to, claim data, claim  
16 forms, grievances, appeals, or other documents or records that contain any patient health  
17 information required to be kept confidential under any state or federal law, as well as any and all  
18 health plan subscriber, patient, or member identifiers. The Parties agree that this Order constitutes  
19 a Qualified Protective Order under 45 C.F.R. 164.512(e), and is intended to comply with HIPAA  
20 and regulations adopted thereunder, as well as applicable state laws and regulations governing  
21 patient privacy and protecting healthcare information.

22 3. SCOPE

23 The protections conferred by this agreement cover not only confidential material (as  
24 defined above), but also (1) any information copied or extracted from confidential material; (2) all  
25 copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony,  
26 conversations, or presentations by parties or their counsel that might reveal confidential material.  
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1        However, the protections conferred by this agreement do not cover information that is in  
 2 the public domain or becomes part of the public domain through trial or otherwise.

3        **4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL**

4        4.1      Basic Principles. A receiving party may use confidential material that is disclosed  
 5 or produced by another party or by a non-party in connection with this case only for prosecuting,  
 6 defending, or attempting to settle this litigation. Confidential material may be disclosed only to the  
 7 categories of persons and under the conditions described in this agreement. Confidential material  
 8 must be stored and maintained by a receiving party at a location and in a secure manner that ensures  
 9 that access is limited to the persons authorized under this agreement.

10        4.2      Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered  
 11 by the court or permitted in writing by the designating party, a receiving party may disclose any  
 12 confidential material only to:

13                (a)     the receiving party’s counsel of record in this action, as well as employees  
 14 of counsel to whom it is reasonably necessary to disclose the information for this litigation;

15                (b)     the officers, directors, and employees (including in house counsel) of the  
 16 receiving party to whom disclosure is reasonably necessary for this litigation, unless the parties  
 17 agree that a particular document or material produced is for Attorney’s Eyes Only and is so  
 18 designated;

19                (c)     experts and consultants to whom disclosure is reasonably necessary for this  
 20 litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

21                (d)     the court, court personnel, and court reporters and their staff;

22                (e)     copy or imaging services retained by counsel to assist in the duplication of  
 23 confidential material and other litigation support services, provided that counsel for the party  
 24 retaining the copy or imaging service or other litigation support services instructs the service not  
 25 to disclose any confidential material to third parties and to immediately return all originals and  
 26 copies of any confidential material;

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(f) during their depositions, witnesses in the action to whom disclosure is reasonably necessary and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A), unless otherwise agreed by the designating party or ordered by the court. Pages of transcribed deposition testimony or exhibits to depositions that reveal confidential material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this agreement;

(g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information.

4.3 Filing Confidential Material. Before filing confidential material or discussing or referencing such material in court filings, the filing party shall confer with the designating party, in accordance with Local Civil Rule 5(g)(3)(A), to determine whether the designating party will remove the confidential designation, whether the document can be redacted, or whether a motion to seal or stipulation and proposed order is warranted. During the meet and confer process, the designating party must identify the basis for sealing the specific confidential information at issue, and the filing party shall include this basis in its motion to seal, along with any objection to sealing the information at issue. Local Civil Rule 5(g) sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal. A party who seeks to maintain the confidentiality of its information must satisfy the requirements of Local Civil Rule 5(g)(3)(B), even if it is not the party filing the motion to seal. Failure to satisfy this requirement will result in the motion to seal being denied, in accordance with the strong presumption of public access to the Court's files.

**5. DESIGNATING PROTECTED MATERIAL**

5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party or non-party that designates information or items for protection under this agreement must take care to limit any such designation to specific material that qualifies under the appropriate standards. The designating party must designate for protection only those parts of material,

1 documents, items, or oral or written communications that qualify, so that other portions of the  
 2 material, documents, items, or communications for which protection is not warranted are not swept  
 3 unjustifiably within the ambit of this agreement.

4 Mass, indiscriminate, or routinized designations are prohibited. Designations that are  
 5 shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to  
 6 unnecessarily encumber or delay the case development process or to impose unnecessary expenses  
 7 and burdens on other parties) expose the designating party to sanctions.

8 If it comes to a designating party's attention that information or items that it designated for  
 9 protection do not qualify for protection, the designating party must promptly notify all other parties  
 10 that it is withdrawing the mistaken designation.

11       5.2 Manner and Timing of Designations. Except as otherwise provided in this  
 12 agreement (see, *e.g.*, second paragraph of section 5.2(b) below), or as otherwise stipulated or  
 13 ordered, disclosure or discovery material that qualifies for protection under this agreement must  
 14 be clearly so designated before or when the material is disclosed or produced.

15           (a) Information in documentary form: (*e.g.*, paper or electronic documents and  
 16 deposition exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings),  
 17 the designating party must affix the word "CONFIDENTIAL" to each page that contains  
 18 confidential material. If only a portion or portions of the material on a page qualifies for protection,  
 19 the producing party also must clearly identify the protected portion(s) (*e.g.*, by making appropriate  
 20 markings in the margins).

21           (b) Testimony given in deposition or in other pretrial proceedings: the parties  
 22 and any participating non-parties must identify on the record, during the deposition or other pretrial  
 23 proceeding, all protected testimony, without prejudice to their right to so designate other testimony  
 24 after reviewing the transcript. Any party or non-party may, within twenty-one days after receiving  
 25 the transcript of the deposition or other pretrial proceeding, designate portions of the transcript, or  
 26 exhibits thereto, as confidential. If a party or non-party desires to protect confidential information  
 27

1 at trial, the issue should be addressed during the pre-trial conference.

2                   (c) Other tangible items: the producing party must affix in a prominent place  
 3 on the exterior of the container or containers in which the information or item is stored the word  
 4 “CONFIDENTIAL.” If only a portion or portions of the information or item warrant protection,  
 5 the producing party, to the extent practicable, shall identify the protected portion(s).

6       5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
 7 designate qualified information or items does not, standing alone, waive the designating party’s  
 8 right to secure protection under this agreement for such material. Upon timely correction of a  
 9 designation, the receiving party must make reasonable efforts to ensure that the material is treated  
 10 in accordance with the provisions of this agreement.

11 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

12       6.1 Timing of Challenges. Any party or non-party may challenge a designation of  
 13 confidentiality at any time. Unless a prompt challenge to a designating party’s confidentiality  
 14 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic  
 15 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to  
 16 challenge a confidentiality designation by electing not to mount a challenge promptly after the  
 17 original designation is disclosed.

18       6.2 Meet and Confer. The parties must make every attempt to resolve any dispute  
 19 regarding confidential designations without court involvement. The parties shall have ten days from  
 20 the date the non-designating party puts the designating party on written notice of challenge to a  
 21 designating party’s confidentiality designation to confer to resolve the issue. Any motion regarding  
 22 confidential designations or for a protective order must include a certification, in the motion or in  
 23 a declaration or affidavit, that the movant has engaged in a good faith meet and confer conference  
 24 with other affected parties in an effort to resolve the dispute without court action. The certification  
 25 must list the date, manner, and participants to the conference. A good faith effort to confer requires  
 26 a face-to-face meeting or a telephone conference.

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1       6.3     Judicial Intervention. If the parties are unable to resolve any dispute about  
 2 confidentiality within the ten day period set forth in paragraph 6.2, then the designating party will  
 3 have thirty days thereafter to move the Court to maintain the confidential status of the designated  
 4 information under Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable).  
 5 The burden of persuasion in any such motion shall be on the designating party. Frivolous  
 6 challenges, and those made for an improper purpose (*e.g.*, to harass or impose unnecessary  
 7 expenses and burdens on other parties) may expose the challenging party to sanctions. All parties  
 8 shall continue to maintain the material in question as confidential until the court rules on the  
 9 challenge. If the designating party does not move to maintain the confidential status of the  
 10 designated information within that thirty day period, then the designated material loses any  
 11 protections afforded by this Protective Order. However, the immediately preceding sentence shall  
 12 not apply to PHI as defined in Section 2, *supra*, or to other designated information to the extent  
 13 such an application would conflict with this Order's status as a Qualified Protective Order.

14      7.     PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER  
 15 LITIGATION

16       If a party is served with a subpoena or a court order issued in other litigation that compels  
 17 disclosure of any information or items designated in this action as "CONFIDENTIAL," that party  
 18 must:

19           (a)     promptly notify the designating party in writing and include a copy of the  
 20 subpoena or court order;

21           (b)     promptly notify in writing the party who caused the subpoena or order to  
 22 issue in the other litigation that some or all of the material covered by the subpoena or order is  
 23 subject to this agreement. Such notification shall include a copy of this agreement; and

24           (c)     cooperate with respect to all reasonable procedures sought to be pursued by  
 25 the designating party whose confidential material may be affected.

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1       8. **UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

2           If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential  
 3 material to any person or in any circumstance not authorized under this agreement, the receiving  
 4 party must immediately (a) notify in writing the designating party of the unauthorized disclosures,  
 5 (b) use its best efforts to retrieve all unauthorized copies of the protected material, (c) inform the  
 6 person or persons to whom unauthorized disclosures were made of all the terms of this agreement,  
 7 and (d) request that such person or persons execute the “Acknowledgment and Agreement to Be  
 8 Bound” that is attached hereto as Exhibit A.

9       9. **INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED**  
 10 **MATERIAL**

11           When a producing party gives notice to receiving parties that certain inadvertently  
 12 produced material is subject to a claim of privilege or other protection, the obligations of the  
 13 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision  
 14 is not intended to modify whatever procedure may be established in an e-discovery order or  
 15 agreement that provides for production without prior privilege review. The parties agree to the  
 16 entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

17       10. **NON TERMINATION AND RETURN OF DOCUMENTS**

18           Within 60 days after the termination of this action, including all appeals, each receiving  
 19 party must return all confidential material to the producing party, including all copies, extracts and  
 20 summaries thereof. Alternatively, the parties may agree upon appropriate methods of destruction.

21           Notwithstanding this provision, counsel are entitled to retain one archival copy of all  
 22 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,  
 23 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work  
 24 product, even if such materials contain confidential material.

25           The confidentiality obligations imposed by this agreement shall remain in effect until a  
 26 designating party agrees otherwise in writing or a court orders otherwise.

1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.  
2

3 DATED: October 23, 2024

s/ Matthew J. Cunanan  
4 Attorneys for Plaintiff

5 DATED: October 23, 2024

s/ Abraham K. Lorber  
6 Attorneys for Defendant

7 PURSUANT TO STIPULATION, IT IS SO ORDERED

8 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any  
9 documents, electronically stored information (ESI) or information, whether inadvertent or  
10 otherwise, in this proceeding shall not, for the purposes of this proceeding or any other federal or  
11 state proceeding, constitute a waiver by the producing party of any privilege applicable to those  
12 documents, including the attorney-client privilege, attorney work-product protection, or any other  
13 privilege or protection recognized by law. This Order shall be interpreted to provide the maximum  
14 protection allowed by Fed. R. Evid. 502(d). The provisions of Fed. R. Evid. 502(b) do not apply.  
15 Nothing contained herein is intended to or shall serve to limit a party's right to conduct a review  
16 of documents, ESI or information (including metadata) for relevance, responsiveness and/or  
17 segregation of privileged and/or protected information before production. Information produced  
18 in discovery that is protected as privileged or work product shall be immediately returned to the  
19 producing party.

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21 DATED: October 28, 2024

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24 HONORABLE LAUREN KING  
25 UNITED STATES DISTRICT COURT JUDGE  
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**EXHIBIT A**

## ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name], of \_\_\_\_\_ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Western District of Washington on [date] in the case of \_\_\_\_\_ **[insert formal name of the case and the number and initials assigned to it by the court]**. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Western District of Washington for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name:

Signature:

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